

15
No. 2732

In the
United States
Circuit Court of Appeals
For the Ninth Circuit

JUNEAU FERRY & NAVIGATION COMPANY, a
Corporation,

Appellant

VS

C. P. MORGAN, et al,

Appellees

Brief for the Appellees

Upon Appeal From the District Court for
Alaska, Division No. 1

Filed

FEB 29 1916

F. D. Menck for
Clerk

GEORGE IRVING,
Attorney for Appellees.



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STATEMENT OF THE CASE.

C. P. Morgan, R. B. Cochran and H. Johanson, co-partners, doing business as the Island Ferry Company, filed their bill against the Juneau Ferry and Navigation Company, a corporation, alleging in substance as follows:

That on November 1st, 1915, the Common Council of the Town of Douglas, Alaska, made and executed a good and sufficient lease (a copy of which was attached to the Bill as Exhibit A) to the plaintiffs, whereby the said Common Council leased to the plaintiffs a certain float and premises, and that the plaintiffs, by virtue of said lease, took quiet, undisturbed and peaceful possession of said leased property from the 6th day of November, 1915, up to the 13th day of November, 1915.

That on the 13th day of November, 1915, the defendant, wholly disregarding the rights of said plaintiffs under said lease, and after notice from the plaintiffs, both oral and written, and after notice in writing served upon the defendant, by the Town of Douglas through its authorized officers, a copy of which notice is attached to the bill and marked exhibit B, the defendant wrongfully, wilfully and maliciously, and in total disregard of plaintiffs' rights herein, entered in and upon said float and premises by landing their ferry thereat for the purpose of discharging freight and passengers and loading freight and passengers, to the exclusion of plaintiffs, and to their damage as hereinafter alleged.

It is further alleged that the defendant owned and operated and does now own and operate a ferry or ferries between the towns of Juneau and Douglas,

Alaska, for a number of years last past; and that they own and control a good and sufficient float and landing at the Town of Douglas, Alaska; that the said Defendant has at all times exclusively used the said float and landing controlled and owned by it for Ferry purposes; that said float and landing is better located and is of superior construction to the float and landing owned, used and controlled by the plaintiffs.

That the landing at, and the trespassing in and upon the said float and premises owned and controlled by plaintiffs, by the said defendant, in total disregard of the rights of the said plaintiffs, and after due and legal notice as hereinafter set forth, to said defendant, was for the sole purpose of depriving plaintiffs of their rights, and injuring plaintiffs in that on account of said acts of trespass committed by defendant as herein set forth plaintiffs have been damaged in an amount which is approximately \$15 per day; and that unless defendant is enjoined from continuing said trespass in and upon said float and premises owned and controlled by plaintiffs, the plaintiffs will be further damaged in a sum upward of \$35 per day and will be obliged to discontinue their said ferry business; That plaintiffs have no plain, speedy nor adequate remedy at law.

Wherefore plaintiff prays that the defendant be enjoined from landing at, occupying or trespassing upon said float and premises, or in any manner interfering with plaintiffs' possession of said float

and premises, and for such further relief as to the court shall seem just and equitable in the premises, and that a temporary restraining order be issued herein enjoining and restraining defendant from continuing the acts and things complained of until further order of the court.

This statement of the case and bill of complaint was duly verified under oath by C. P. Morgan, one of the co-partners of the Island Ferry Company.

Record p 4 and 5.

Attached to and made a part of said complaint are the following exhibits:

EXHIBIT "A" TO COMPLAINT: LEASE

"This indenture made this 13th day of November, 1915, between the own of Douglas, Alaska, a Municipal corporation hereinafter designated the party of the first part; and C. P. Morgan and R. B. Cochran, a co-partnership doing business under the name of the Island Ferry Company, hereinafter designated as parties of the second part;

"WITNESSETH: That the said party of the first part for and in consideration of the rents, covenants and agreements hereinafter mentioned, to be kept, paid and performed by the said parties of the second part, their executors, administrators and assigns, has demised and leased to the said parties of the second part the following described premises situated in the Town of Douglas, Alaska, and owned and controlled by the said first party, to wit:

"That certain float and landing ADJOINING

THE CITY DOCK ON THE NORTH SIDE OF SAME, together with all piling and structures incident and appurtenant to the same and necessary for the maintenance of said float; and also the gangway and necessary approaches to said float with the right of ingress and egress to and from said float by land and water."

TO HAVE AND TO HOLD the above described premises with the appurtenances unto the said second parties, their executors, administrators and assigns from the 1st day of November, 1915, for and during the full term of one year from said date.

And the said second parties in consideration of the leasing of the premises aforesaid by the said first party to the said second parties, do covenant and agree with the said first party to pay to the said first party as annual rent for said demised premises the sum of Three Hundred (\$300) Dollars, payable in monthly installments of Twenty Five (\$25) Dollars on the first of each and every month during the full term of this lease contract.

And the said second parties further covenant with the said first party that they will keep said demised premises in a clean and wholesome condition in accordance with the ordinances of the said Town of Douglas, and that at the expiration of the time in this lease mentioned, they will yield up that said premises to the said first party in as good condition as when entered upon, loss by fire, inevitable accidents and ordinary wear thereof and damage by the elements alone exempted.

It is further agreed by the said second parties that they will not sub-let nor under-let said premises nor any portion thereof nor sell, transfer nor assign this lease without having first obtained the written consent of the said first party.

It is expressly agreed and understood by and between the parties aforesaid that if the rent above reserved or any part thereof shall be unpaid on the day of payment wherein it ought to be paid as aforesaid, or if default be made in any of the covenants herein contained, to be kept by the said second parties, their heirs, administrators or assigns, it shall, and may be lawful for the said first party, at its election, to declare said term ended, and re-enter the said premises and expel all persons therefrom, using such force as may be necessary in so doing.

It is further understood and agreed that all the conditions and covenants contained in this lease shall be binding upon the executors, administrators and assigns of the parties to these presents respectively.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands this 13th day of November, 1915.

CITY OF DOUGLAS, A MUNICIPAL
CORPORATION,

By PETER JOHNSON.

President of Common Council and
Ex-Officio Mayor.

First Party.

JOE ROBERTSON
FRANK OLIVER.

C. P. MORGAN
R. B. COCHRAN,
Second Parties.

United States of America,
Territory of Alaska—SS.

THIS CERTIFIES That on this 13th day of November, 1915, before me, the undersigned, a notary public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Peter Johnson, to me known to be the President of the Common Council of the Town of Douglas, and Ex-Officio Mayor of the same, and also to me personally known to be the individual who signed the foregoing instrument on behalf of the Town of Douglas as the party of the first part thereof, and acknowledged to me that he signed the same on behalf of the said first party; and that he was authorized so to do by the Common Council of the said town of Douglas at a regular meeting held on the first day of November, 1915; and also appeared personally C. P. Morgan and R. B. Cochran, to me known to be the individuals described in and who signed the foregoing instrument as the parties of the second part thereof, and acknowledged to me that they signed the same as their own free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year in this certificate first above written.

R. R. HUBBARD.

Notary Public for Alaska.

(Seal) My Commission Expires March 21, 1916.
True copy of original Exhibit "A")

EXHIBIT "B" TO COMPLAINT; NOTICE, ETC.
COPY

Douglas, Alaska, November 5th, 1915.

To the Juneau Ferry and Navigation Company and
to all other persons operating boats to and from
the north float at the City Dock, Douglas.

You are hereby notified that at the Council meeting held in Douglas on November 1st, the north float of the City Dock was leased to the Island Ferry Company for a period of one year and is their exclusive property for that period. Any person operating boats to and from said float or in any manner trespassing on same without permission of the Island Ferry Company, will be prosecuted.

W. A. SHAFER,
City Marshal.

Copy of the above served on F. Pantermahl, at
11:35 a. m., Nov. 5, 1915.

W. A. SHAFER,
City Marshal.

EXHIBIT "B"

COPY

Douglas, Alaska, Nov. 13th, 1915.

Mr. E. J. Margrie, Manager,
Juneau Ferry and Navigation Company,
Juneau, Alaska:—

Dear Sir:—

This is to acknowledge receipt of your letter of the 12th Inst. In reply you are advised that the

City Council on Nov. 1st leased the North Float of the City Dock to the Island Ferry Company for a term of one year commencing on November 1st, 1915, at a rental of \$25 per month. This float has been delivered over to the Island Ferry Company and to their exclusive use.

The south float is still available to the public. The City Council has acted wholly within its rights and has not deprived the public of the use of a public float.

It is not the purpose of the Council to maintain two floats and we feel under no obligation to your company to maintain a free additional float on the north side of the City Dock. The lease has been given and the Island Ferry Company is now in possession of the North float. Any further negotiations you have should be conducted with them.

(Seal)

PETER JOHNSON.

Mayor.

R. R. HUBBARD,

City Clerk.

EXHIBIT "B"

COPY

Douglas, Alaska, Nov. 11, 1915.
Juneau Ferry and Navigation Company,
Juneau, Alaska
Gentlemen:

I herewith acknowledge receipt of your letter dated Nov. 10th addressed to the writer also of a

letter dated Nov. 5th, 1915, addressed to W. A. Shafer, City Marshal. In answer I will state that the records of the Council meeting held Nov. 1st shows that a motion was made and seconded that the north float of the Douglas City Wharf be leased to the Island Ferry Company for one year at a rental of \$25 per month payable in advance. Motion carried.

I am informed by the City Attorney that Mr. Morgan of the Island Ferry Company informed him that Mr. Margrie of the Juneau F. and N. Company refused to cease landing his boats at the float which the city leased to Mr. Morgan's Company until he was notified by the City authorities of Douglas that the float had been leased (the communication continues) "Will you kindly have Mr. Shafer give a written notice to whoever is in command of the Teddy on her next trip she makes to this float. I enclose herewith a notice which I think will answer the purpose." I am unable to make any further statement as the Council have had no meeting since my return from Seattle on the 2nd Inst. All communications on file in this office will be presented to the Council at their next meeting.

Yours Truly,
R. R. HUBBARD,
City Clerk.

(Endorsed) Filed in the District Court, District of Alaska, First Division, November 15th, 1915, J. W. Bell, Clerk, etc. (record page 11)

Upon the filing of the foregoing complaint and

statement of case in the District Court for the District of Alaska, Division No. One. The Judge thereof granted plaintiffs an order to show cause and temporary restraining order on the 16th day of November, 1915.

Record pp. 12, 13 and 14.

That on the 22nd day of November, 1915, said Juneau Ferry and Navigation Company filed an *answer to the rule to show cause*.

Record pp. 14, 15, 16 and 17

The cause came on to be heard upon the bill of complaint, the rule to show cause and the answer thereto and thereupon oral evidence for both sides was introduced.

Record pp. 21-95.

That on the 24th day of December, 1915, Honorable Robert W. Jennings upon hearing of proof in open court issued an injunction order directed to the defendant and appellant herein (penente lite) restraining them from landing their boats at that certain NORTH FLOAT OR LANDING PLACE LOCATED ON THE NORTH SIDE OF THE CITY DOCK OR WHARF AT THE TOWN OF DOUGLAS, ALASKA, OR IN ANYWISE TRESPASSING UPON OR OCCUPYING SAME.

Record p 18-19

The foregoing is a true statement of the case as laid under the pleadings together with the exhibits attached thereto.

THE APPELLANT ASSIGNS THE FOLLOWING ERRORS.

I

That the court erred in granting the temporary injunction prayed for for the reason that the evidence conclusively showed that the dock or float mentioned in the complaint and restraining order, was a public dock acquired by the City of Douglas for public purposes, and that the same had been used for public purposes for several years past, and that the Common Council of the City of Douglas was without power to grant and convey an exclusive lease thereof to the plaintiffs.

II

That the evidence conclusively showed that the plaintiffs and appellees had no lease to the float and dock mentioned in the complaint, and were not entitled to the exclusive use thereof.

ARGUMENT.

FIRST—WAS THE NORTH SIDE FLOAT OR LANDING, THE ONE LEASED TO THE APPELLEES BY THE TOWN OF DOUGLAS, A PUBLIC FLOAT OR LANDING UNDER THE RECORD IN THIS CASE.

SECOND—WAS THE NORTH SIDE FLOAT, THE ONE IN QUESTION, AND LEASED TO

THE APPELLEES BY THE TOWN OF DOUGLAS, ACQUIRED BY SAID TOWN OF DOUGLAS FOR PUBLIC PURPOSES, UNDER THE RECORD IN THIS CASE: OR IS IT NOT CONCLUSIVELY SHOWN BY THE RECORD THAT THE NORTH SIDE FLOAT, THE ONE IN QUESTION WAS ACQUIRED BY THE TOWN OF DOUGLAS FOR A PARTICULAR PURPOSE; AND IS IT NOT FURTHER SHOWN BY THE RECORD THAT THE SAID NORTH FLOAT, THE ONE IN QUESTION IS AT THIS TIME AND WAS ON NOVEMBER 1st, 1915, THE TIME OF THE GIVING OF THE LEASE, BEING USED FOR THE IDENTICAL PURPOSE FOR WHICH THE SAID TOWN OF DOUGLAS ACQUIRED SAME.

THIRD—IF, UNDER THE CONTENTION OF THE APPELLANT THE SAID UORTH SIDE FLOAT, THE ONE LEASED TO APPELLEES BY SAID TOWN OF DOUGLAS, WAS ACQUIRED BY THE SAID TOWN FOR PUBLIC PURPOSES WOULD THE SAID TOWN OF DOUGLAS THROUGH ITS COMMON COUNCIL HAVE THE POWER TO GRANT AND CONVEY SAID FLOAT AND LEASE THE SAME FOR A PERIOD OF ONE YEAR TO THE APPELLEES.

FOURTH—THE RECORD CONCLUSIVELY SHOWS THAT THE PLAINTIFFS AND APPELLEES HAVE A GOOD AND SUFFICIENT LEASE.

As to the first proposition:—The record shows that the leasing of the north side float by the Town of Douglas to the plaintiffs and appellees was not of a public float or landing but was of a float or landing acquired by the Town of Douglas solely for the purpose for which it was leased;

which said purpose was

First, as a source of revenue to the Town of Douglas;

Second, to break the monopoly of the appellant, the Juneau Ferry and Navigation Company, and as an inducement to an opposition or independent Ferry Company to engage in the Ferry business between the Towns of Douglas and Juneau, Alaska, thereby securing better service and reducing the rates for the carrying of passengers and freight.

Record pp. 23-25-27-29-30-37-38-41-42-47-48-57-73.

As to the second proposition:—The record conclusively shows that the said Town of Douglas did not acquire said north float or landing for public purposes, but on the contrary that said north float and landing was acquired solely for the purpose for which it was leased and that it was not generally used and had fallen into disuse in that it had become rotten and waterlogged.

Record pp. 23-25-26-29-38-84-85-66-73-74.

As to the duty of a municipal corporation "to provide for the location, construction and maintenance of the necessary streets, alleys, crossings, side-

walks, sewers, wharves, etc'' see Chapter 21, page 318, sub-div. 4 of section 627, Compiled Laws of Alaska.

As to the power of President of the Common Council, Ex-Officio Mayor of the Town of Douglas, Alaska, to execute lease, "The common council shall have and exercise the following powers, first; To adopt rules and regulations for their proceedings and to elect one of their members President of the Common council, who shall also be Ex-Officio Mayor of the Town, and who, when chosen shall continue to hold the position of President and Ex-Officio Mayor during the term for which the Council was elected, AND WHO SHALL TAKE CARE THAT THE ORDINANCE AND RESOLVES OF THE COUNCIL BE FAIHFULLY EXECUTED.

Section 627, sub. div. 1, chap 21, Comp. Laws of Alaska.

The common council may exercise their powers by ordinance or resolution, but no ordinance or resolution shall be valid unless adopted by a vote of four members of the Council where not less than five members are present (section 628, page 320, Comp. Laws of Alaska.)

Record p 53, 54

Record p 51, 52, 53

McQuillin Municipal Corporations vol.

3 p. 2528, sec. 1147.

Where the power to dispose of property owned by a city is vested, by statute, in the City Council,

the manner of its exercise not being prescribed, the adoption of a motion authorizing and directing the conveyance of property is as efficacious as the passage of an ordinance.

Morgan et al vs Johnson, Mayor; 106 Fed.
452.

As to conformity To authority conferred
. to execute,

Ibid

As a broad principle of law, municipal corporations through their officers and agents cannot surrender or delegate to others any proprietary interest in wharves by reason of the power conferred on the mayor or common council to erect, control or regulate said public utilities

McQuillin on Municipal Corporations, vol.
886, sect. 400.

The court will take judicial notice of the fact that a float, such as the one in question, is a raft of logs capped and decked over with planks and resting upon the surface of the water, rising and falling with the tide action. It is in the nature of personal property as distinguished from a dock or wharf, which is fixed to the soil and permanent in character; and it is susceptible of being moved from place to place without damage to realty for the reason that it is not attached or in anywise fixed to any realty whatsoever; but rests solely upon the surface of the water. (Record p. 66-67.)

There is, however, an exception to this broad

rule of law *and which controls in this case*, to wit; "Where public property under the control of the municipality, has ceased to be used generally, or is not used by the public, then the same may be sold or leased as the public welfare may demand"

City of Ogden v Bear Lake and River Waterworks and Irrigation Co. et al; 52 Pac. Rep. 697-699.

Unless restricted by law (and by that I take it is meant the statute under which municipal charter is obtained) a municipal corporation may transfer PROPERTY FOR PARTICULAR PURPOSES, ESPECIALLY IF SUCH PURPOSES ARE CALCULATED TO ADVANCE THE GOVERNMENTAL AND MUNICIPAL INTERESTS OF THE LOCALITY)

McQuillin on Municipal Corporations, vol. 3, p. 2524, sec. 1146.

The purpose for which a municipal corporation acquires property for a certain declared purpose and so uses it, does not deprive the city of the power to use the premises for other public purposes where the public necessity thereafter requires that its use be altered. So where land is conveyed to a municipality for certain specified purposes and for any other necessary public use an appropriation of a part of it to a particular use does not exhaust the power of the municipality to apply the same land to a different necessary public use when no longer needed for the original purpose.

McQuillin on Municipal Corporations,
sec. 1126, pp. 2489-90 vol. 3

Pettit v Macon, 95 Ga. 645; 23 S. E. 198

Newell v Hancock, 35 Atl. 253

The purpose for which a municipal corporation can acquire property for municipal purposes, and the different acts it can perform in so doing.

28 Cyc. p. 610 (B)

WHERE A MUNICIPAL CORPORATION
MAKES A CONVEYANCE OF PUBLIC PROPER-
TY THE LEGAL PRESUMPTION IS IN FAVOR
OF SUCH CONVEYANCE.

The law will usually indulge in presumptions in favor of the authority of the Municipal corporation to convey and also in favor of the legality of the conveyance.

McQuillin on Munc. Cor. vol 3, sec. 1150, p
2531

Larned vs Jenkins, 113 Fed 364

Under the record in this case the north side float, the one leased by the Town of Douglas to the appellees was private property of the municipality of Douglas, and, in the absence of a statute or charter provision to the contrary, said municipality has the power to mortgage, lease or pledge said privately owned corporate property.

McQuillin on Munc. vol. 3, sect. 1144, 1145,
p. 2520-21

A municipal corporation has the right to lease or let public places, same being an incident to such ownership.

Stone v Oconomowoc; 36 N. W. 829-830

Bell v City of Plattsville 36 N. W. 831-33

SALE OR DISPOSAL OF MUNICIPAL PROPERTY—Municipal corporations, it has been said, hold all property in a fiduciary capacity; and they have not the power of disposition which belongs to a private proprietor. All their powers are held in trust for public use, and the validity of their exercise generally depends upon the purpose thereof. And in this manner must be observed the double nature of the corporation and its functions, GOVERNMENTAL AND MUNICIPAL.

Property held by the corporation for strictly Governmental purposes may be sold or disposed of only under express legislative authority. BUT PROPERTY ACQUIRED AND HELD FOR GENERAL MUNICIPAL PURPOSES IS SUBJECT TO ITS DISCRETIONARY POWER OF *USE AND DISPOSAL*

28 Cyc. pages 621-622

The north side float, the one in question, and leased to appellees by the Town of Douglas, was acquired by the Town of Douglas through its Mayor, M. J. O'Connor by gift, and was placed in position by the said Town of Douglas on the north side of the City Dock for a particular purpose and, as a special inducement for an independent ferry company to engage in the ferry business between the Towns of Douglas and Juneau.

Record page 23,37

As a general rule, a municipal corporation has no power to purchase lands except for municipal purposes. But while a municipality cannot purchase lands or other property for other than municipal purposes it may sometimes acquire same by adverse possession or by gift for other than corporate objects; and the cases supporting the general rule that a municipal corporation has no power to purchase property for other than municipal purposes, do not go to the point that a town cannot acquire lands and other property by possession for other than municipal purposes. The acquirement of land by possession does not involve an expenditure, neither does acquirement of land by deed of gift or by devise; and it has been decided that a gift or devise of land to a Town is good, even though the land be given or devised in general terms and be accepted without any intent to use it directly for municipal purposes.

Land so given, even when not wanted for municipal purposes, may be applied by sale or lease to the alleviation of municipal burdens.

Vol 3, McQuillin on Munc. Cor. sect. 1114, page 2571-72-73 and cases cited in notes thereunder.

A municipal corporation may rent to private individuals that portion of public property not needed for municipal purposes.

French v Quincy 3 Allen, Mass. 9
Camden v. Camden 77 Maine, 530

60 Vt. 530

71 Wis. 142, 155

20 Am and Eng Ency. Law. p. 1187, note 8

20 Am and Eng Ency. Law, p. 1188, note 2

Wharves are not highways but private property of the municipality.

Horn v People, 26 Mich 221

Thompson v N. Y. 11 N. Y. 115

In transactions affecting the ownership of its property a municipal corporation is, within the scope of its powers, regarded much in the light of a private individual.

Touchard v Touchard 5 Cal. 306

Conclusion; It has been conclusively shown by the record that the float in question, that is, the north side float of the City Dock of Douglas, was placed in position by the Town of Douglas for the purpose of leasing the same to an independent Ferry Company; for the purpose of reducing the passenger fare between the towns of Juneau and Douglas and thereby affecting a great saving to the public of the municipality of Douglas. The evidence shows that at no time was the float ever used by appellant, except when its own float was undergoing repairs and it was more convenient for it to land its boats at the city dock; nor did appellant ever seek to acquire the right to land at said float, but on the contrary refused to use said float and refused to land passengers thereat, until the appellee entered the ferry business in opposition to appellant and reduced the fare.

Only after the entry of the appellees in the ferry business, did the appellant awaken to the fact that it was more convenient for its INDIAN patrons to land at the float in question, notwithstanding the fact that it had been in the ferry business between Juneau and Douglas for a period of twenty years, and that the north side city float had been in place since 1911.

Record page 16, 88

Brief of appellant, page 12

The leasing of this North Side float did not deprive the public of any of its rights, for the reason that the City of Douglas had built and maintained a free public float on the south side of the city dock, which was sheltered from the winds and elements and which was of superior construction and several times larger than the float on the north side. The record shows that this south float was kept in a state of good repair, while the north float, which was being kept by the City of Douglas for the purpose of leasing it to an opposition Ferry Company, pending the entry of such Company into the ferry business, was fallen into a state of disuse and was not in good repair and was unsafe.

Record p 26, 27, 38, 48, 49, 66, 85

The fact that this north float was in such a condition, while a good and adequate float was maintained for the public on the south side, would alone be sufficient evidence that the north side float was not intended for a free public float but was placed

there for the purpose for which it was leased to appellees, as testified to by former mayor O'Connor and Ex-Councilman Brie and Keist.

All the evidence in the record shows that for twenty years the appellant, the Juneau Ferry and Navigation Company had been engaged in the transportation of freight and passengers between the towns of Juneau and Douglas, Alaska; that they had a complete monopoly of this business, that they owned and maintained a well equipped dock and a float and landing of superior construction and one of the best of its kind in Alaska; and that they charged twenty-five cents for the transportation of a single passenger between the towns of Douglas and Juneau. That the common councils of the Town of Douglas had, for a number of years sought to break this monopoly and reduce this fare. They sought this for the purpose of serving the interests of the taxpayers and residents of Douglas, and saving them thousands of dollars annually.

Not until the year 1915, were they able to induce an opposition ferry Company to enter this business. Prior to the building of the City Dock, by the Common Council in 1909, the appellant owned the only dock and the only float in Douglas. The evidence shows that this float was more convenient for the public and more convenient for the use of the appellants in their ferry business, being three minutes nearer the Town of Juneau than the float afterward acquired by the City and leased to the appellees.

Record p 63-84

The evidence further shows that the appellees, immediately upon their entry into the transportation and ferry business, reduced the fare between Douglas and Juneau to fifteen cents.

The only object of the appellant in seeking to land at the north side float, was to harass and annoy the appellees, to delay them in their own landings, as the record shows that they timed their arrivals and departures to and from this float so as to exclude the boat of the appellees, the float being too small to accommodate two boats at the same time, and that appellant adopted the same signals on arrival and departure as those used by the appellees, for the purpose of confusing and misleading patrons of appellees. Record p. 56.

THE ONLY OBJECT OF THE APPELLANT IN SEEKING TO CONTROL THIS NORTH FLOAT OR IN EVEN SEEKING TO USE IT WAS TO FORCE THE APPELLEES OUT OF THE FERRY BUSINESS AND TO COMPEL THEM TO DISCONTINUE THE SAME IN ORDER THAT APPELLANTS MIGHT AGAIN HAVE A MONOPOLY OF THE BUSINESS, INCREASE THE FARE AGAIN TO TWENTY-FIVE CENTS TO THE GREAT LOSS AND DAMAGE OF ALL THE TAXPAYERS AND RESIDENTS OF DOUGLAS AND OF ALL THE RESIDENTS OF THE DIFFERENT COMMUNITIES ON GASTINEAU CHANNEL

We respectfully submit that the learned District Judge was correct in granting the temporary restraining order, upon the facts submitted and upon the record as made; and that said temporary order as made by said District Court should not be disturbed.

GEORGE IRVING,
Attorney for Appellees. 6

21